

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHARLES RICE KENDALL and	:	
ANN P. HOCHBERG, as Trustees for	:	
The Thomas E. Proctor Heirs Trust,	:	
	:	
Plaintiffs,	:	
v.	:	NO. 21-CV-01491
	:	
EQT AMD LLC, EQT ARO LLC,	:	CHIEF JUDGE BRANN
INTERNATIONAL DEVELOPMENT	:	
CORP., and SWN PRODUCTION	:	
COMPANY, LLC,	:	
	:	ELECTRONICALLY FILED
Defendants.	:	

STATUS REPORT

Defendants EQT AMD LLC and EQT ARO LLC (together, “EQT Defendants”) hereby file this Status Report pursuant to the Court’s July 6, 2023 Order as follows:

1. On July 6, 2023, the Court entered an Order granting EQT Defendant’s Motion to Stay pending resolution of the appeal captioned *Pennsylvania Game Commission v. Thomas E. Proctor Heirs Trust*, No. 22-1587 (3d Cir.), and requiring that EQT Defendants file a status report “every ninety (90) days and promptly upon resolution of the Third Circuit appeal.” (ECF 58.)

2. On May 1, 2023, the United States Court of Appeals for Third Circuit granted the Pennsylvania Game Commission and Thomas E. Proctor Heirs Trust’s request for, *inter alia*, certification of a question of state law to the Supreme Court

of Pennsylvania, writing “[o]ur certification of a question of state law to the Supreme Court of Pennsylvania, pursuant to Local Appellate Rule 110.1, will follow.” *See Pennsylvania Game Comm’n v. Thomas E. Proctor Heirs Trust*, No. 22-1587, May 1, 2023 Order (ECF 62) (attached as Exhibit A).

3. The Third Circuit issued a Petition for Certification of a Question of State Law on October 11, 2023, which was granted by the Supreme Court of Pennsylvania on November 27, 2023. *See Pennsylvania Game Comm’n v. Thomas E. Proctor Heirs Trust*, No. 22-1587 (3d Cir.), October 11, 2023 Petition for Certification of Question of State Law (ECF 63) (attached as Exhibit B) and *Pennsylvania Game Comm’n v. Thomas E. Proctor Heirs Trust*, No. 31 EAP 2023 (Pa.), Docket Sheet as of April 1, 2024 (attached as Exhibit C).

4. The Supreme Court of Pennsylvania accepted the following question for resolution:

Whether, on the record provided here, a 1908 tax sale of an unseated parcel of land, induced by the surface owner’s failure to pay taxes on the estate, and made to an agent of the defaulting surface owner, constitutes a title wash, thereby divesting the subsurface owner of his interest in the estate?

See Exhibit C at p. 5.

5. Appellant Commonwealth of Pennsylvania, Pennsylvania Game Commission filed its opening brief on January 22, 2024. *See Exhibit C at p. 8.*

6. On that same date, EQT Defendants and International Development Corporation filed *Amicus Curiae* Briefs in support of Appellant Commonwealth of Pennsylvania, Pennsylvania Game Commission. *See* Exhibit C at p. 8.

7. Appellee Thomas E. Proctor Heirs Trust filed its Brief on March 27, 2024. *See* Exhibit C at p. 9.

8. Briefing is currently scheduled to close in this matter on April 10, 2024 with the filing of Commonwealth of Pennsylvania, Pennsylvania Game Commission's Reply Brief.

9. EQT Defendants submit that this Court's stay Order issued on July 6, 2023 should remain in place at this time.

Respectfully submitted:

/s/ John B. Dempsey
Daniel T. Brier
John B. Dempsey
Richard L. Armezzani
Myers, Brier & Kelly, LLP
425 Biden Street, Suite 200
Scranton, PA 18503
(570) 342-6100

Daniel T. Donovan
Ragan Naresh
Kirkland & Ellis, LLP
1301 Pennsylvania Avenue NW
Washington, DC 20004
(202) 389-5000

Attorneys for Defendants, EQT AMD
LLC AND EQT ARO LLC

Date: April 1, 2024

CERTIFICATE OF SERVICE

I, John B. Dempsey, hereby certify that a true and correct copy of the foregoing Status Report was served upon counsel of record via the Court's ECF system on this 1st day of April 2024:

/s/ John B. Dempsey
John B. Dempsey